

EDWARD MARCINKO

IBLA 81-755

Decided July 28, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 72905.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Applications: Attorney-in-Fact or Agents

An oil and gas lease application, Form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3 and multiple filings violative of 43 CFR 3112.6-1, are left unanswered.

APPEARANCES: Jeffrey W. Virden, Esq., Tustin, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Edward Marcinko appeals the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 18, 1981, rejecting his simultaneous oil and gas lease application filed in the October 1980 drawing. His application was drawn with first priority for parcel WY 6753 and given serial number W 72905. BLM rejected the application because it had not been completely executed as required by 43 CFR 3112.2-1. 1/

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1/ This reference is to the newly revised regulation promulgated at 43 FR 35156 (May 23, 1980) and effective June 16, 1980.

Appellant's application was executed, signed, and submitted on his behalf by an officer of the Orvan Company (Orvan), a filing agency for simultaneous oil and gas lease applications. Examination of appellant's application reveals that questions (d) through (f) on the reverse side of the card were not answered. BLM's decision states in part:

As stated in our letter of May 1, 1981 to your filing service, the Orvan Company, we do not pre-adjudicate filing service agreements, as we have neither the time nor personnel to accomplish this. On May 8, 1981 Orvan wrote us that their agreement had been on file here since July 1980, and they "assumed" that the agreement was in order. Because of the enormous volume of documents filed here by filing services after the change in regulations on June 16, 1980, we were unable to screen the documents individually to assure that each service agreement would meet all the requirements: it is, therefore, doubly important that your filing service and its representatives ensure a document's adequacy prior to filing.

We have reviewed your simultaneous oil and gas lease application for W 72905, and the copy of the "Agreement" you have with Orvan, whereby you give them the authority to prepare and submit applications in your behalf.

The last paragraph of the "Agreement" states:

"I have been provided with a copy of the official Application Form 3112-1 (July 1980) and certify to qualifications (a) through (g) thereon, and further certify that the "No" boxes should be checked under items (d), (e) and (f)." (emphasis supplied).

We find that the appropriate boxes under (d), (e) and (f) were not checked at the time the card was prepared for you, which is the reason for this rejection. [Emphasis in original.]

In his statement of reasons, appellant argues that the failure to check the answers to questions (d) through (f) was proximately caused by BLM's failure to promptly respond to Orvan's July 24, 1980, letter submitting a sample of its agreement with its clients and explaining the procedures it contemplated for oil and gas lease application filings. He argues that since BLM's response was not received until 7 months after the October 1980 drawing there was no way to correct his application.

The sample agreement submitted by Orvan to BLM is unsigned and stamped "COPY." Orvan also enclosed a BLM simultaneous oil and gas lease application with sample signatures to show how Orvan would be

signing the application on behalf of its clients but the form was otherwise unexecuted. As a result, we find that even if BLM had reviewed these submissions at an earlier date there would have been no way to know that Orvan did not intend to check the appropriate responses to questions (d) through (f) because the sample application was not filled out on either the front or back except for the sample signatures. In addition, the sample agreement provided that "I \* \* \* further certify that the 'No' boxes should be checked under items (d), (e) and (f)." This language is subject to the construction that by the agreement Orvan was directed to check the "No" boxes on behalf of the other party to the agreement. Thus, the silence of BLM could not reasonably be construed as acquiescence in the failure to complete the application by checking the appropriate boxes. The above-described submission was unrelated to appellant's application herein. Orvan did submit a copy of appellant's agreement with its May 8, 1981, letter to BLM. Appellant's agreement contained the same language as the sample agreement.

[1] The applicable regulation, 43 CFR 3112.2 and 3112.2-1 state in part:

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. [Emphasis added.]

The application form clearly contemplates that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check the appropriate boxes)" (Original in italics). Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest or amendments to one's previously filed statement of qualifications may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease offer (question (d)) is a violation of the regulation at 43 CFR 3102.2-7, the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3, and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR

3112.6-1(c). Although the Secretary of the Interior has discretion whether to issue an oil and gas lease for a given tract of land, where he has determined to issue an oil and gas lease for lands not within a known geological structure of a producing oil or gas field, he is required by statute, 30 U.S.C. § 226 (1976), to issue the lease to the first-qualified applicant therefor. Udall v. Tallman, 30 U.S. 1, 4 (1965). The Secretary is entitled to require such information as is necessary to ensure that an applicant for a lease is qualified. See Ken Wiley, 54 IBLA 367 (1981). The questions on the application form serve that purpose. The failure of the applicant to check an answer to each question creates a serious defect in the certification required by the application. This Board has consistently required strict compliance concerning the filing of applications in the simultaneous oil and gas leasing program. See, e.g., Rose B. Carrington, 46 IBLA 149 (1980); Margaret H. Wygocki, 45 IBLA 79 (1980); John L. Messinger, 45 IBLA 62 (1980). <sup>2/</sup> An application is not complete where questions (d) through (f) have not been answered. It is not sufficient that the leasing service have its clients' answers to those questions on file nor may an incomplete application be cured by later submission of the required information. Vincent M. D'Amico, 55 IBLA 116 (1981). See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

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<sup>2/</sup> Although these decisions arose under the former regulations, the requirement of strict compliance will still be enforced under the revised regulations and these decisions may be considered precedential.

